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this Memorandum Decision shall not be
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establishing the defense of res judicata,
collateral estoppel, or the law of the case.

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**IN THE
COURT OF APPEALS OF INDIANA**

ANTHONY L. SMITH,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 82A01-0605-CR-210
)	
STATE OF INDIANA,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Scott Bowers, Judge
Cause No. 82D02-0307-FC-613

October 11, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Anthony Smith brings this *pro se* appeal of the trial court's summary denial of Smith's petition for a writ habeas corpus.

We reverse and remand.

ISSUE

Whether the trial court erred in not treating Smith's petition as one for post-conviction relief.

FACTS

On July 22, 2003, Smith was charged with one count of robbery as a class C felony. On November 16, 2004, a jury found Smith guilty as charged. On May 31, 2005, a jury found Smith to be an habitual offender. On June 1, 2005, the trial court imposed sentence.

Smith initiated a timely appeal, which was fully briefed and before this court on January 1, 2005. Before we issued our opinion in his direct appeal, Smith filed with the trial court a petition for writ of habeas corpus on April 5, 2006. The trial court summarily denied Smith's petition on April 6, 2006.

On June 19, 2006, we issued our opinion on Smith's appeal. We found that sufficient evidence supported his conviction of robbery and the determination that he was an habitual offender. Smith v. State, 82A05-0507-CR-381 (Ind. Ct. App. June 19, 2006).

Smith brings the instant appeal of the trial court's denial of his writ for habeas corpus.

DECISION

Smith's petition for a writ of habeas corpus asserted that he should be "immediately release[d] from the authority of [the trial] court[']s judgment" because it was "without subject matter jurisdiction to convict and sentence him" after it had "previously relinquished its jurisdiction of his person to the State of Kentucky by allowing him to be placed in the custody of the Kentucky authorities without invoking the procedures set forth in the IAD."¹ (App. 17, 18). In other words, he claimed to have been wrongfully convicted and sentenced.

A writ of habeas corpus is used to seek relief from "illegal" restraint of the applicant's liberty. Ind. Code § 34-25.5-2-1. The purpose of the writ "is to determine the lawfulness of the custody or detention of the defendant." In re Brettin, 723 N.E.2d 913, 915 (Ind. Ct. App. 2000). Smith is not being illegally restrained or unlawfully detained because he was sentenced by the trial court after judgment of conviction on a valid jury verdict, a conviction which we have affirmed.

Moreover, a petitioner may not file a writ of habeas corpus to attack his conviction or sentence. Partlow v. Superintendent, 756 N.E.2d 978, 980 (Ind. Ct. App. 2001). The proper procedural vehicle for a challenge to the validity of the petitioner's conviction or sentence is a petition for post-conviction relief, rather than a petition for a writ of habeas corpus. Id. If a petitioner "erroneously captions his action as petition for a writ of habeas corpus rather than post-conviction relief," the proper course for the trial court is to "treat

¹ His appellate brief explains that the reference is to the Interstate Agreement on Detainers Act.

the petition as one for post-conviction relief.” Id. Further, as the State correctly notes, when a petition for a writ for habeas corpus attacks the validity of the conviction or sentence, our rules provide that such a petition “shall” be treated as a petition for post-conviction relief. Ind. Post-Conviction Rule 1(1)(c). A

Smith’s petition challenged the validity of his conviction and sentence. Therefore, it should have been considered by the trial court as a petition for post-conviction relief.

We reverse and remand for the trial court to consider Smith’s petition as one seeking post-conviction relief.

Reversed and remanded.

NAJAM, J., and FRIEDLANDER, J., concur.